

STATEMENT

OF

ELAINE L. CHAO
DEPUTY MARITIME ADMINISTRATOR

OF THE

DEPARTMENT OF TRANSPORTATION

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

ON THE APPLICATION OF THE
CARGO PREFERENCE LAWS

SEPTEMBER 18, 1986

STATEMENT OF ELAINE L. CHAO, DEPUTY MARITIME ADMINISTRATOR,
DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON
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MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON MERCHANT MARINE. MY NAME IS ELAINE L. CHAO, AND I AM THE DEPUTY MARITIME ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION. I AM ACCOMPANIED THIS MORNING BY GARY S. MISCH, ASSOCIATE ADMINISTRATOR FOR MARKETING AND DOMESTIC ENTERPRISE OF THE MARITIME ADMINISTRATION, AND THOMAS ROMEO, CHIEF OF THE DIVISION OF NATIONAL CARGO, ALSO OF THE MARITIME ADMINISTRATION. I AM PLEASED TO APPEAR THIS MORNING TO PRESENT THE VIEWS OF THE DEPARTMENT ON THE SUBJECTS UNDER CONSIDERATION AT YOUR OVERSIGHT HEARING ON GOVERNMENT AGENCY COMPLIANCE WITH THE CARGO PREFERENCE LAWS.

MR. CHAIRMAN, OVERALL I WOULD SAY THAT GOVERNMENT AGENCY COMPLIANCE WITH THE CARGO PREFERENCE LAWS HAS GENERALLY BEEN GOOD, BUT I CANNOT SAY THAT WE HAVE COMPLIANCE IN ALL RESPECTS. WHEN WE LEARN OF A PARTICULAR SITUATION, SUCH AS THE MATTERS I WILL BE COMMENTING ON THIS MORNING, WE INITIATE EFFORTS TO ASSURE COMPLIANCE WITH THESE LAWS. THESE SITUATIONS ARISE FROM TIME TO TIME, BUT OVERALL I WOULD SAY THAT COMPLIANCE IS GENERALLY GOOD.

THE FIRST MATTER I HAVE BEEN REQUESTED TO COMMENT ON IS THE ANNUAL IMPORTATION OF ABOUT 18,000 TONS OF FOREIGN STEEL BY THE DEFENSE INDUSTRIAL SUPPLY CENTER (DISC) OF THE DEFENSE LOGISTICS AGENCY. THIS IS A MILITARY CARGO THAT IS SUBJECT TO THE CARGO PREFERENCE ACT OF 1904 (10 U.S.C. 2631). THE CARGO PREFERENCE ACT OF 1904 WAS THE FIRST OF THE CARGO PREFERENCE STATUTES, AND REQUIRES THAT 100 PERCENT OF MILITARY CARGOES BE SHIPPED ON VESSELS OF THE UNITED STATES OR BELONGING TO THE UNITED STATES. THE CARGO PREFERENCE ACT OF 1954 (46 APP. U.S.C. 1241(B)) REQUIRES THAT 50 PERCENT OF SUCH MILITARY CARGOES BE SHIPPED ON PRIVATELY-OWNED UNITED STATES-FLAG COMMERCIAL VESSELS. WHEN IT CAME TO OUR ATTENTION THAT DISC WAS RECEIVING STEEL FROM BRUSSELS AMERICA INC. IN FOREIGN-FLAG VESSELS, WE IMMEDIATELY TOOK ACTION, AND AFTER NEGOTIATIONS COVERING A PERIOD OF NINE MONTHS OBTAINED PARTIAL COMPLIANCE WITH OUR CARGO PREFERENCE LAWS AND REGULATIONS. ONLY SOME OF BRUSSELS AMERICA'S STEEL CARGOES FOR DISC ARE NOW MOVING ON U.S.-FLAG VESSELS.

THE SITUATION WITH RESPECT TO THE OCEAN TRANSPORTATION OF IMPORTED CARGO CONTAINERS BY THE NAVAL FACILITIES ENGINEERING COMMAND AND THE MILITARY SEALIFT COMMAND (NAVY) IS SLIGHTLY DIFFERENT. THE NAVY LET A SERIES OF CONTRACTS WITH A FOREIGN SUPPLIER TO BUY STANDARD 20-FOOT CONTAINERS. THE NAVY HAS CONTENTED TO US THAT THE CARGO PREFERENCE ACT OF 1904 WOULD APPLY TO THE OCEAN TRANSPORTATION OF COMPLETED

CONTAINERS, (END ITEMS), BUT TAKES THE POSITION THAT IT DOES NOT APPLY WHERE THE COMPONENTS OF THE CONTAINERS (CONTAINER KITS) ARE SHIPPED. WE HAVE NOTIFIED THE NAVY THAT WE DISAGREE WITH SUCH INTERPRETATION OF THE CARGO PREFERENCE ACT OF 1904, AND IF THEY MAINTAIN THIS POSITION, WE MUST FIND THEM IN VIOLATION OF THE CARGO PREFERENCE LAWS. MOST RECENTLY, WE HAVE BEEN ADVISED THAT THE NAVY BELIEVES THAT THE CARGO PREFERENCE ACT OF 1904 WOULD APPLY TO THE OCEAN TRANSPORTATION OF ITEMS TO WHICH THE NAVY HAS TITLE PRIOR TO SHIPMENT, BUT DOES NOT APPLY TO THE CONTAINERS IN QUESTION BECAUSE THEY ARE SHIPPED BEFORE THE NAVY HAS TAKEN TITLE TO THEM. THE NAVY HAS REFERRED THIS MATTER TO ITS DAR COUNCIL FOR CLARIFICATION.

WITH RESPECT TO THE PROPOSED DEPARTMENT OF DEFENSE (DOD) RULEMAKING THAT WOULD PERMIT THE USE OF FOREIGN-FLAG VESSELS IN CERTAIN INSTANCES, THIS PROBLEM AROSE ON JULY 28, 1986, WHEN THE OFFICE OF THE SECRETARY OF DEFENSE PUBLISHED A PROPOSED RULE IN THE FEDERAL REGISTER. UNDER THIS PROPOSED RULE, THE SECRETARY OF THE NAVY, RATHER THAN THE PRESIDENT WOULD HAVE DISCRETIONARY AUTHORITY TO WAIVE CARGO PREFERENCE ANY TIME A CONTRACTING OFFICER DETERMINES THAT RATES BEING CHARGED BY U.S. OPERATORS ARE EXCESSIVE.

THE DEPARTMENT TOOK STRONG EXCEPTION TO THIS PROPOSED RULE, BECAUSE IT WOULD ENABLE THE DOD TO DETERMINE THAT RATES CHARGED BY PRIVATELY OWNED U.S.-FLAG OPERATORS FOR OCEAN TRANSPORTATION UNDER THE CARGO PREFERENCE ACT OF 1904 ARE "EXCESSIVE AND OTHERWISE UNREASONABLE" EVEN THOUGH THIS

DEPARTMENT HAD DETERMINED UNDER THE CARGO PREFERENCE ACT OF 1954 THAT SUCH RATES WERE BELOW THE FAIR AND REASONABLE CEILING. IN OUR COMMENTS TO DOD ON THE PROPOSED RULE WE STATED THAT WE BELIEVE IT WOULD IMPROPERLY SUBSUME THIS DEPARTMENT'S AUTHORITY TO DETERMINE FAIR AND REASONABLE RATES FOR PRIVATELY OWNED U.S.-FLAG VESSELS. A COPY OF THE DEPARTMENT'S COMMENTS IN THIS RULEMAKING IS ATTACHED TO MY PREPARED STATEMENT AS APPENDIX A.

MR. CHAIRMAN, THE ENFORCEMENT OF OUR CARGO PREFERENCE LAWS IS AN ONGOING ENDEAVOR OF THE DEPARTMENT OF TRANSPORTATION. PLEASE BE ASSURED THAT WE WILL CONTINUE OUR EFFORTS TO ASSURE THAT THE U.S.-FLAG MERCHANT MARINE RECEIVES EVERY TON OF CARGO THAT IT IS ENTITLED TO UNDER THESE STATUTES.

MR. CHAIRMAN, THAT CONCLUDES MY PREPARED STATEMENT. MY COLLEAGUES AND I WILL BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU OR THE MEMBERS OF THE SUBCOMMITTEE MAY HAVE.